

Section 4

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OBSERVATIONS ON ASPECTS OF THE HISTORY OF THE
PENOBSCOT NATION WHICH MAY BE RELEVANT TO *UNITED*
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I TRIBAL EXISTENCE

The Penobscot Nation is part of the Abenaki linguistic group, a collection of tribes which once occupied land as far west as Vermont.^{1/} Because of their geographic location, the Penobscots were drawn into contact with non-Indians at an early date, and the record evidence of the tribal existence of the Penobscots is extensive. The tribe entered into treaties with the Colony of Massachusetts in 1693,^{2/} 1699,^{3/} 1713,^{4/} 1717,^{5/}

^{1/} Ernest S. Dodge, "Ethnology of Northern New England and the Maritime Provinces," *Massachusetts Archaeological Society, Bulletin*, CVIII (1957), 68.

^{2/} Truce between Indian and English, July 21, 1693, *The Barter Manuscripts: The Documentary History of the State of Maine* [hereafter *Bar. Mss.*] (24 vols.; Portland: Maine Historical Society, 1869-1916), XXIII, 4-5. The Submission and Agreements of the Eastern Indians, Aug. 11, 1693, *ibid.*, X, 9-11.

^{3/} Indian Treaty, Jan. 7, 1698/99, *ibid.*, XXIII, 19-11.

^{4/} Treaty of Eastern Indians, July 11-- , 1713, *ibid.*, 37-50. *Calendar of State Papers, Colonial Series, 1574-1733* [CSP] (40 vols.; NCR Microcard Editions, 1965), XXVII, 225.

^{5/} Indian Treaties in Maine Historical Society, *Collections*, 1st Ser. (Portland: The Society, 1853), III, 373-74.

1725,^{6/} 1726,^{7/} 1727,^{8/} 1749,^{9/} and 1752.^{10/} John Allan, the Superintendent of the federal Eastern Indian Agency during the Revolution dealt with the Penobscots as a tribe,^{11/} as did the

6/ The Submission and Agreement of the Delegates of the Eastern Indians, Dec. 15, 1725, in Peter Cummings and Neil Mickenberg, eds., *Native Rights in Canada*, 2nd ed. (Toronto: General Publishing Company, 1972), 300.

7/ Conference with the Eastern Indians, Maine Historical Society, *Collections*, 1st ser., III, 392-93.

8/ Conference with the Eastern Indians at the Further Ratification of the Peace, Held at Falmouth in Casco-Bay, in July, 1727, *ibid.*, 407-47; and *Traite de Paix Entre les Anglois et les Abenakis*, Aoust, 1727, *Collection de Manuscrits contenant Lettres, Memoires, et autre documents historiques relatif a la Nouvelle France* (4 vols.; Quebec: Legislature de Quebec, 1883-85), III, 407-47.

9/ Treaty with the Eastern Indians at Falmouth, 1749, Maine Historical Society, *Collections*, 1st ser., IV, 145-67; and Nathaniel Boulton, ed., *New Hampshire Provincial Papers....* (7 vols.; Concord: George E. Jenks, 1867-73), V, 131-33.

10/ Treaty with the Eastern Indians at St. George's Fort, 1752, Maine Historical Society, *Collections*, 1st ser., IV, 168-84. For colonial treaties see Henry F. Depuy, comp., *A Bibliography of the English Colonial Treaties with the American Indians* (New York, 1917).

11/ See Allan's Commissions and Instructions from the Continental Congress and the Government of Massachusetts, *Papers of the Continental Congress* [PCC] (Jan. 15, 1777), Roll 8, Vol. 7, 65-68; May 24, 1783, PCC, Roll 163, Vol. 149, II, 561-62; June 3, 1783, PCC, Roll 26, Vol. 19, 53; *Baxter Bax. Mss.*, XV, 212, 215-16. For additional evidence of Allan's federal relationship with the tribe see: Return of Indians and their Familys that are and have Been in the Service of the United States by order of Col^o Allen, Superintendt and Commandr in Chief of Indians, Eastern Department, at Machias, July 28, 1780, Frederic Kidder, *Military Operations in Eastern Maine and Nova Scotia during the Revolution Chiefly Compiled from the Journals and Letters of Colonel John Allan, with Notes and a Memoir of Col. John Allan* (Albany: Joel Munsell, 1867), 52-54.

Commonwealth of Massachusetts which concluded treaties with the tribe in 1796 and 1818.^{12/} Since its separation from Massachusetts in 1820, the State of Maine has continuously treated the Penobscots as a tribe of Indians,^{13/} and the Penobscots have continuously occupied the lands which they reserved in their treaties.

The history of the governmental structure of the Penobscot Nation is roughly similar to that of the Passamaquoddy Tribe. Until the nineteenth century the tribe was governed by Sagamores who were selected for life.^{14/} These Sagamores were responsible for allocation of the family hunting territories, and hence became increasingly more important as the fur trade rose in importance.^{15/} The Sagamores also played a critical role

^{12/} The 1796 treaty is recorded in the Hancock County Registry of Deeds, Ellsworth, Maine at Book 27, Page 6; for 1818 Treaty, see Mary F. Farnham, ed., *Documentary History of the State of Maine*, Vol. III (Lefavor-Tower Company, Portland: 1902), 127.

^{13/} The State of Maine has enacted a comprehensive set of statutes which purport to regulate many facets of Penobscot tribal life. See generally 22 M.R.S.A. § 4761 *et seq.*

^{14/} Alfred Goldsworthy Baily, *The Conflict of European and Eastern Algonkian Cultures, 1504-1700* (Toronto: University of Toronto Press, 1969), 91-92, and Morrison, *The People of the Dawn*, (Unpub. Ph'd. Diss. Orono: University of Maine, 1975), p. 25, 38-40.

^{15/} Dean R. Snow, *Wabenaki "Family Hunting Territories,"* *American Anthropologist*, 70 (1968), 1143-51.

in the Penobscots' rather extensive diplomatic encounters with other governmental entities, both Indian and non-Indian.^{16/}

In the early part of the nineteenth century a political split developed within the Penobscot Nation, and the Sachems, who had traditionally been chosen for life, became elective.^{17/} Two political parties were formed, and leaders were chosen alternately every two years from each party.^{18/} This situation persisted until the present century, when the party system became less evident. Today the governing body of the Tribe consists of a Governor and Lieutenant Governor who are elected every two years, and a 12 member tribal council consisting of members elected for two year staggered terms.^{19/}

^{16/} Frank G. Speck, *The Eastern Algonkian Wabanaki Confederacy*, *American Anthropologist*, XVII (1915), 492-508, outlined the eighteenth-century alliance system which united the Abenaki peoples. A few short biographies of Penobscot and Maliseet leaders are also suggestive about these developments. See Frank T. Siebert, "Wenemouett," in George W. Brown, *et al.*, eds. *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1966--), II, 664-66; Kenneth M. Morrison, "Loron Sauguararam," *ibid.*, III, 584-85 for Penobscot biographies and Richard I. Hunt, "Ambrose St. Auban," and "Pierre Tomah," to appear *ibid.*, IV, for Maliseet leaders.

^{17/} Eugene Vetromile, *The Abenakis and their History: or Historical Notices of the Aborigenes of Acadia* (New York: James B. Kirker, 1866),

^{18/} *Ibid.*

^{19/} 22 M.R.S.A. § 4793.

II ABORIGINAL TERRITORY

A. Nature of Use.

Penobscot aboriginal territory probably reached its maximum extent by the middle of the eighteenth century.^{20/} Penobscot land usage patterns were similar to those of the Passamaquoddy.^{21/} Both tribes were riverine in orientation, and both hunted inland areas during the fall and winter, and spent the summer by the sea shore. Frank G. Speck, who has conducted extensive anthropological research among the Penobscots, describes the pattern as follows:

Within this stretch of country the Penobscot used to divide their time somewhat regularly, spending the summer months (June, July, August) in the lower coast or salt-water region, then ascending the river to the family hunting territories for the fall hunting (October, November, December), and finally returning to the tribal rendezvous at the main headquarters at Oldtown

^{20/} See discussion at pages 8-11 of the author's Report to the United States Department of the Interior on the Passamaquoddy Tribe.

^{21/} *The Jesuit Relations*, June 20, 1677, Vol. 60, 263-64, refers to the riverine orientation of the Penobscots. On the nature of Penobscot aboriginal title within their own sense of law see: Lt Governor Dunbar to Mr. Popple, Nov. 17, 1730, CSP, XXXVII, 345-46. The secondary literature is extensive. See: James Phinney Baxter, *The Abnakis and their Ethnic Relations*, Maine Historical Society, *Collections*, 2nd ser., III, 13-40; Fannie H. Eckstorm, "The Indians of Maine," in L.C. Hatch, ed., *Maine: A History* (New York: The American Historical Society, 1919), I, 43-64; Dodge, "Ethnology of Northern New England and the Maritime Provinces," 68-71; Frank G. Speck, *Penobscot Man: The Life History of a Forest Tribe in Maine* (Philadelphia: University of Pennsylvania, 1940), 7ff.; and Dean R. Snow, "Wabanaki 'Family Hunting Territories,'" *American Anthropologist*, 70 (1968), 1143-51.

for the dead of winter (January, February, March). The early spring months (April, May) were spent drifting down toward the ocean and hunting through the neighboring streams and in the main river for eels. This, it should be understood, is only a general outline of the movements of the people; many of them would spend longer periods in the interior, while some "lazy" families would remain most of the time at salt water, gaining an easy though monotonous living from the sea.^{22/}

Dr. Speck also notes that the Penobscots hunted seals during the summer from the islands adjacent to their territory,^{23/} and that the members of the tribe were strict conservationists.^{24/} The Tribe's conservation practices were described in 1764 as follows:

They said it was their custom to divide the hunting grounds and streams among the different Indian families; that they hunted every third year and killed two-thirds of the beaver, leaving the other third to breed; beavers were to them what cattle were to the Englishmen, but the English were killing off the beavers without any regard for the owners of the lands.^{25/}

B. *Evidence of territorial location and extent.*

Much of the aboriginal territory of the Penobscot Nation was defined in the many negotiations which accompa-

^{22/} Frank G. Speck, *Penobscot Man*, 26.

^{23/} *Ibid.*, 35.

^{24/} *Ibid.*, 207.

^{25/} Joseph Chadwick, "An Account of a Journey from Fort Pownal -- Now Fort Point -- Up the Penobscot River to Quebec, in 1764," *Bangor Historical Magazine*, IV (1889), 143.

nied the various treaties and agreements by which the bulk of the Tribe's territory was ceded. Since these negotiations will be discussed in some detail in the following section, those events will not be separately discussed here. This section, rather, will highlight the anthropological research which has been completed on Penobscot aboriginal hunting territories.

As was indicated above, the Penobscot Nation, like the other tribes in the area, was riverine in orientation, and divided its overall territory into smaller family hunting territories. The Tribe's aboriginal territory consisted primarily of the ^{26/} drainage basin of the river which bears its name. The principal villages of the tribe were all located on the Penobscot River. The following villages were occupied until well into the present century: Indian Island, opposite Old Town, Maine; Olemon, some twelve miles up-river; Long Island, opposite Lincoln, Maine. Other large camps, possibly towns, were situated on the Penobscot River at the Mattawamkeag River and the Passamadumkeag River, and at Castine on the eastern shore of Penobscot Bay. ^{27/} These villages served as staging grounds from which the

^{26/} Frank G. Speck, *Penobscot Man*, 7.

^{27/} *Ibid.*, 25-26.

family hunting groups would move to their respective territories in the fall.^{28/}

Practically the entire Penobscot watershed, an area encompassing 5,303,511 acres, was divided into family hunting territories.^{29/} In addition, however, Frank Speck reports several Penobscot family hunting territories in the area above the Penobscot watershed.^{30/} The northern-most of these, which Speck describes as "perhaps the largest and most active family of hunters in the tribe," occupied land in the St. John watershed reaching to Maine's northern border with Canada.^{31/} While it is difficult to ascertain from Dr. Speck's published work how much

^{28/} *Ibid.*, 22.

^{29/} Speck's map of Penobscot family hunting territories omits a small portion of the west branch of the Penobscot watershed. Dialogue in the 1786 and 1796 treaty negotiations, however, indicates that the Tribe inhabited the entire Penobscot watershed, and I am of the opinion that the entire watershed was part of the Tribe's aboriginal territory.

^{30/} These include, at least, family hunting territories numbered 19, 20 and 22. For map see *ibid.*, p. 6. It should be noted, however, that Speck claims that the Newell family, Number 20, was a Malicite family until it was incorporated with the Penobscots in 1870. *Ibid.*, 228. If Speck is correct in this, the territory of the family would not properly be part of the Penobscot claim, unless it could be shown that the territory of that family was not ceded by the Penobscots until sometime after that date.

^{31/} *Ibid.*, 229.

land the Penobscots occupied in the St. John watershed, there are approximately 4,753,418 acres in that portion of the St. John watershed which is in the State of Maine.

III LOSS OF ABORIGINAL TERRITORY

The Penobscots' aboriginal lands were protected in the Tribe's colonial treaties. The Treaty of Portsmouth in 1713, for example, guaranteed the Penobscot "their own Grounds" and defined that territory as lands held as of 1693.^{32/} In all her dealings with the Abenaki peoples in general, and with the Penobscots in particular, Massachusetts held to the practice of purchase or cession to establish English title.^{33/} Indeed, throughout the early colonial period, land conflicts between the Penobscots and Massachusetts revolved only around the issue of the legality of several seventeenth-century land deeds covering but a tiny fraction of the Tribe's aboriginal territory.

^{32/} Frederic Kidder, ed., "The Abenaki Indians; their Treaties of 1713 and 1717," *Maine Historical Society, Collections*, 1st ser., VI, 251 and 260.

^{33/} An Act to Prevent and make void clandestine and illegal purchase of lands from the Indians, June 26, 1702, *Acts and Resolves, Public and Private of the Province of the Massachusetts Bay* (21 vols.; Boston: Wright and Potter, 1869-1922), I, Chap. 11. See also text of the Treaty of 1717, *ibid.*, 260, as examples.

Land conflicts between Massachusetts and the Kennebecs, on the other hand, were more severe and resulted in war in 1722. Although the Penobscots abandoned the Kennebecs' cause in 1725, they realized that peace was impossible without some basic agreement about land. In a preliminary meeting in 1725, the Penobscot negotiator, Loron Sauguaaram, urged the English to abandon their forts at St. Georges River (in Penobscot territory) and at Richmond on the Kennebec River (outside Penobscot territory). Massachusetts replied: "We shall neither build or settle any where but within our own Bounds so settled, without your Consent."^{34/} A year later Sauguaaram insisted that the two forts be removed. As before, the English defended the validity of their original deeds from the Indians.^{35/} On July 18, 1726, the Committee on Lands presented twenty-nine deeds to the Penobscots for their inspection. Only two concerned Penobscot land; both were signed by Penobscot achem Madockawando in 1694 and conveyed land on Penobscot Bay at Muscongus north of Pemaquid point and on both sides of the St. Georges River.^{36/} Realizing that Massachusetts would not compromise,

^{34/} At a conference with the Delegates of the Indian Tribes, Nov. 15--Dec. 1, 1725, Baxter, *Bax. Mss.*, XXIII, 189.

^{35/} Conference with the Eastern Indians, Maine Historical Society, *Collections*, 1st ser., III, 389.

^{36/} At Falmouth in Casco Bay, July 18, 1726, Baxter, *Bax. Mss.*, XXIII, 204-08.

the Penobscots signed a treaty in 1726.^{37/} A year later the Kennebecs and several Canadian Indians joined the Penobscots in ratifying this treaty, which is known as Dummer's Treaty^{38/} and which defined legal relations between the Penobscots and Massachusetts until 1755. Dummer's Treaty confirmed Massachusetts' "Rights of Lands and former Settlements." At the same time, however, the treaty reserved to the Penobscots "...all their lands, Liberties and Properties, not by them conveyed or Sold to or Possessed by any of the English subjects as aforesaid, as also the Privilege of Fishing, Hunting, and Fowling as formerly."^{39/}

During the post war years the Penobscots held Massachusetts to these terms, and Governor Johnathan Belcher repeatedly assured the Nation of Crown protection. The Penobscots opposed, and halted, the eastward expansion of the Crown settlement called Georgia on Pemaquid peninsula,^{40/} and they asserted that Samuel

^{37/} Conference with the Eastern Indians, Maine Historical Society, (July, August-1726), *Collections*, 1st ser., III, 377-405.

^{38/} These negotiations are discussed in Morrison, *"The People of the Dawn,"* 388.

^{39/} Maine Historical Society, *Collections*, 1st ser., III, 418.

^{40/} Penobscots to Dunbar, Nov. 14, 1729, Baxter, *Bax. Mss.*, X, 445-46 and CSP, XXXVI, 574; Dunbar to Gov. Phillips, Sept. 16, 1730, *ibid.*, XXXVII, 369, Dunbar to Lt. Gov. Tailor, Nov. 12, 1730, *ibid.*, 348.

Waldo illegally took their lands on the St. Georges River.^{41/}
Governor Belcher assured them that the Crown protected their
title. In February, 1735, he declared that he would treat them
"with Reason and Justice and in the same Manner with the rest
of King George's Subjects."^{42/} When the Penobscots complained,
he promised that the land article of Dummer's Treaty would be
"punctually observ'd on the part of this Government, who will
not push on the settlement of those Lands, 'till they are sat-
isfy'd, that those, who at present pretend to be the Proprietors,
have obtain'd the native right from the true Owners."^{43/}

It is not necessary to detail the precise nature of these
conflicting claims, for the Penobscots and Massachusetts reached
a compromise. The Penobscots accepted the *de facto* legality of
the 1693 Madockawando deed and, in 1736, ran a boundary northeast
of St. Georges between their own and English lands. Further settle-
ments, the Indians declared, would not be tolerated.^{44/} In Feb-
ruary, 1737, Belcher ordered his agent, John Gyles, to encour-

^{41/} Mass. Council, May 17, 1736; Indian Conference, June 25, 1736,
Baxter, *Bax. Mss.*, XXIII, 236-41.

^{42/} J. Belcher to J. Gyles, Feb. 28, 1734/35 Belcher Letterbooks,
Mass. Historical Society, Film IV, 505-06.

^{43/} J. Belcher to J. Gyles, Apr. 14, 1735, *ibid.*, Film 4, 565.

^{44/} Conference with the Penobscot & Norridgewalk Indians in July,
1738, Baxter, *Bax. Mss.*, XXIII, 252.

age new settlement provided that the settlers conformed to this agreement.^{45/}

The land article of Dummer's Treaty was reinacted in the 1749 treaty which ended King George's War. Land was not an issue in that conflict and was not discussed during the conference.^{46/} Although land was discussed during the 1752 treaty negotiations, the 1749 treaty was ratified unaltered.^{47/} Wish-
ing to prevent a Penobscot--French alliance, Massachusetts carefully recognized Penobscot title. In the early 1750's, for example, the Penobscots complained about, and Massachusetts

^{45/} J. Belcher to J. Gyles, Feb. 25, 1736/37, Belcher Letterbooks, Film V, 157-58.

^{46/} Treaty with the Eastern Indians at Falmouth, 1749, Maine Historical Society, *Collections*, 1st ser., IV, 162.

^{47/} Louis, a Penobscot speaking on behalf of his own tribe and the Norridgewocks and Maliseets said: "...we are for proceed-
upon Governour Dummer's Treaty, by which it was concluded, that the English should inhabit the lands as far as the salt water flowed, and no further; and that the Indians should possess the rest." These boundaries are not at all clear. Perhaps Louis referred to the Kennebec River, and it is likely that he was describing the agreed upon boundary at St. Georges. It is certain that he was not referring to the Penobscot, as English settlement was far from that river in 1752. The English assured the Abenaki that their lands would be protected: "Upon the third article in the aforesaid Treaty, the Commissioners said, if there be any encroachments made upon your lands by the English, let us know it; we will inform the Government of it, so that justice may be done you." See Treaty with the Eastern Indians at St. George's Fort, 1752, *ibid.*, quotes at 174 and 177.

ordered removed, an English trespasser on Matinicus, an island south of Penobscot Bay.^{48/}

Before the outbreak of the Seven Years' War between France and Great Britain, the Penobscots worked carefully to preserve peace with Massachusetts. When Massachusetts declared war against the Abenaki tribes on June 10, 1755, the Penobscots were excepted on condition that they join the English against hostile Abenaki as Dummer's Treaty required.^{49/} The Penobscots accepted this condition but refused to move their families near the English settlements for the duration of the war as Governor William Shirley requested,^{50/} and as Lt. Gov. Phips demanded in July, 1755.^{51/} The Penobscots even attempted to maintain their

^{48/} In Aug. 1751 Governor Phips appointed Commissioners to confer with the Abenaki. He instructed them to "Avoid controversy about Lands." See Instructions in re Treaty with Indians, Aug. 15, 1751, Baxter, *Bax. Mss.*, XXIII, 412. During the meeting Loran Sauguaaram, the Penobscot negotiator, complained about a squatter on Matinicus. The commissioners replied: "Our Governour knows nothing of this matter, but we will inform him of it Govr Dummer's Treaty shall be complied with." Report of Conference, August, 1751, *ibid.*, 416. After repeated complaints from the Penobscots, Massachusetts ordered the Matinicus squatters removed. In Council, June 12, 1753, Baxter, *Bax. Mss.* XXIII, 448-49; S. Phips to Jabez Bradbury, *ibid.*, 449.

^{49/} Declaration of war, June 10, 1755, Baxter, *Bax. Mss.*, XII, 408-11; also *ibid.*, XXIV, 30-32.

^{50/} Reply of Penobscot Indians, June 27, 1755, *ibid.*, XXIV, 34.

^{51/} Phips to Penobscots, *ibid.*, 40-41.

alliance with Massachusetts after twelve of their tribesmen were killed by an English scouting party.^{52/} Massachusetts persisted in the demand that the Penobscots settle among the English^{53/} and, after claiming without evidence that the Penobscots participated in an attack on Fort St. Georges, declared war against them on November 3, 1755.^{54/}

The Penobscots took a defensive stance during the war. Penobscot attacks on Massachusetts were few and far between and in February, 1757, the Penobscots sued for peace.^{55/} In May, 1757, a group of twenty-six Penobscots visiting St. Georges Fort for further negotiations were attacked and war resumed.^{56/}

^{52/} On the incident see Phipps to Penobscots, July 10, 1755, *ibid.*, 41-42. For the Penobscots' careful response see: Umbarius to Governor, July 16, 1755, *ibid.*, 44; Penobscot Chiefs to Governor, July 25, 1755, *ibid.*, 46.

^{53/} Action of House, August 8, 1755, *ibid.*, 46-47; In Council, August 8, 1755, *ibid.*, XII, 454; Final Vote, August 14-15, *ibid.*, XXIV, 48-49; Governor to Penobscots, August 18, 1755, *ibid.*, 51-53.

^{54/} In Council, Oct. 3, 1755, *ibid.*, 58; Phipps to Bradbury, Oct. 3, 1755, *ibid.*, 59; Bradbury to Phips, Oct. 24, 1755, *ibid.*, 61; Proclamation S. Phips, Nov. 3, 1755, *ibid.*, 62-64.

^{55/} Indian's Letter, Feb. 22, 1757, *ibid.*, 72.

^{56/} Letter, Joshua Freeman to the Council, May 17, 1755, *ibid.*, XIII, 64-65; Journal of Capt. Joshua Freeman, *ibid.*, XXIV, 79-80.

Even then the Penobscots remained largely on the defensive.

In 1758 Massachusetts Governor Thomas Pownall began to argue that the construction of a fort on the lower Penobscot River would quickly divest the Indians of their aboriginal territory. Pownall asserted to the Secretary of State, William Pitt, that "A Fort Erected there now in time of War Effectually Secure the Property to the Province from any Pretence of Claim either from French or Indian."^{57/} Hurrying to complete his plan before the end of the war, Pownall set out for eastern Maine with three hundred and thirty-three men. He arrived at Fort St. Georges on May 9, 1759, and found five Indians waiting to discuss peace with him. Two days later three more Indians arrived to open negotiations. Pownall refused to discuss peace except on his own terms.^{58/} The governor asserted that "by breaking their Faith and the Conditions of their Treaties, they had forfeited their Lives, their Liberties, and their Lands...."^{59/} The Penobscots

^{57/} Of the Defense of our Inland Frontiers, January, 1758, *ibid.*, XIII, 120.

^{58/} Pownall justified his treatment of the Indians by accusing them of being spies. Jeff: Amherst to Pownall, June 9, 1759, Mass. Historical Society, Instructions to Governors, Box VII, 2046.

^{59/} The entire account of Pownall's Penobscot expedition is based on his "Journal of the Voyage of Gov. Thomas Pownall...", Maine Historical Society, *Collections*, 1st ser., V, 365-87, quote at 372.

might have peace on condition that they accepted Massachusetts' rule and settled among the English. Pownall travelled on to the lower Penobscot and on May 16 again addressed the Indians who accompanied him. "Tell your People that I am come to build a Fort at Penobscot, and will make the land English.... If they say I shall not, let them come and Defend their Land now in time of War."^{60/} Pownall threatened the Penobscots with destruction if they failed to accept the loss of their lands. The alternative was a vaguely defined peaceful coexistence:

Let them become English, they and their Wives and Families, and come and live under the Protection of the Fort, and I will Protect them. They shall have Wigwams and Planting Ground near the Fort, and may hunt as usual: But the English shall hunt also: They shall not interfere with one another's hunt, when they hunt separate; and they may hunt together when they choose it.^{61/}

To formalize possession Governor Pownall constructed a fort at Stockton Springs, Maine, sailed to the head of the tide on the Penobscot and buried a lead plate which stated:

May 23, 1759, Province of Massachusetts
Bay Dominions of Great Britain--Possession
Confirmed by T. Pownall, Gov^{62/}

^{60/} *Ibid.*, 376.

^{61/} *Ibid.*

^{62/} Gov. Pownall's Certificate, May 23, 1759, Maine Historical Society, *Collections*, 1st ser., V. 387.

The Penobscots were not defeated in Pownall's campaign. Indeed, the campaign involved no real military engagements whatsoever, and the Penobscots occupied the same land after the event as they had before. Moreover, in contravention of universal British and Massachusetts practice, no treaty of peace was negotiated with the Penobscots following the campaign, and the Penobscots never formally ceded any lands after the supposed "conquest." Instead of a treaty, Pownall posted a petition in which he offered to "receive into his Majesties Protection ... all such Indians of the Penobscott tribe or their Allies, as do, or shall enter into the engagements in these Presents, & as so, or shall sign the same."^{63/} Only four Indians signed the document. While these Indians purported, among other things, to relinquish their claim to lands, they did so only on behalf of themselves and their families. None of the signers were leaders of the Tribe.^{64/} A notation on the document indicates that at the time the Tribe had "...five Sachems & Seventy three Warriors."^{65/}

^{63/} Papers, Massachusetts Resolves 1796, Jan. Sess. c. 86, Massachusetts Archives, Boston, Mass.

^{64/} The individuals who signed this document were probably four of the group of five Penobscots who conferred with Bridg^r Preble at Ft. Pownall on March 2, 1760. In that conference the five individuals indicated that they would return to the fort in three weeks with their wives and children to make their submission to Pownall, but made it clear that they were acting only for themselves and could not speak for the rest of the Tribe on this matter. Baxter, *Bax. Mss.*, XXIV, 102.

^{65/} Papers, Massachusetts Resolves 1796, Jan. Sess. c. 86, Massachusetts Archives, Boston, Mass.

Pownall's successor, Governor Bernard, clearly saw the need for a treaty with the Penobscots, but was thwarted in his efforts to obtain one. In September, 1762, the Massachusetts House and Council opposed Bernard's proposal to travel to Maine to conclude a peace on the grounds that the Indians had not formally asked for a treaty.^{66/} On July 23, 1763, Bernard instructed Captain Sanders to invite the Penobscots to send two or three of their chiefs to Boston to discuss scheduling for a treaty conference.^{67/} Three Penobscots arrived a month later and discussed renewing the Tribe's former treaties with Massachusetts; however, no agreement was reached, and no date for a conference was set.^{68/} In a message delivered on June 5, 1764, Bernard stressed the strength of the Penobscots and again urged that a treaty be concluded with the Tribe.^{69/} Still no action was taken.

^{66/} Message, Sept. 14, 1762, *ibid.*, XIII, 294.

^{67/} Instructions to Capt. Sanders, July 23, 1763, Baxter, *Bax. Mss.*, XXIV, 116.

^{68/} Indian Conference, August 22, 1763, *ibid.*, 116-23. In his reply to the Indians the following day, Bernard said that he would not permit the soldiers at Fort Pownall to hunt beaver or other furs, and that he would only permit them to hunt deer or moose in the vicinity of the fort. *Id.*, 121-122.

^{69/} Message, June 5, 1764, *ibid.*, XIII, 341-45.

This, then, was the state of affairs in the closing years of the colonial era. The Indians continued to occupy their principal hunting grounds, although English settlement below the head of the tide on the Penobscot gave rise to occasional conflict.^{70/} Governor Bernard took the position in his conversations with the Penobscots that they had been conquered by Pownall and had thereby lost their lands.^{71/} He nonetheless continually agitated for a treaty with the Tribe. While no treaty was concluded, it appears that the two sides may have come to an unwritten understanding that the Tribe would retain everything above the head of the tide. At a conference held in 1769, for example, three delegates from the Tribe (who had maintained in a separate document that, while they may have been conquered, they still possessed their aboriginal territory)^{72/} sought to retain aboriginal title to their hunting grounds and to have fee title to a tract for planting:

We should be glad of a sufficiency at present for our hunting but as hunting is daily decreasing we would be glad of a tract of land assigned us for a Township settled upon us and our posterity for the purposes of husbandry.^{73/}

^{70/} See *ibid.*, 157.

^{71/} *Ibid.*, 121, 127.

^{72/} *Ibid.*, 159. The tribe apparently (and correctly) took the position that while the defeat of their French allies may have divested the French of their fee title, it did not divest the Indians of their aboriginal title.

^{73/} *Ibid.*, 157-158.

Although no townships were ever set off to the Tribe in fee, indeed no further colonial treaties were concluded with the Tribe, the townships which were proposed by Bernard at the conference were to be on either side of the Penobscot village of Old Town, just above the head of the tide.^{74/}

At the opening of the American Revolution, the Massachusetts Provincial Congress quickly recognized the military importance of the Penobscots. On June 21, 1775, a delegation of Penobscots (who had been brought to Watertown for the purpose) addressed the Provincial Congress. Land problems were clearly the Indians' primary concern. Their comments, as reported by the Committee which was appointed to confer with the Tribe, were as follows:

They have a large Tract of Land, which they have a right to call their own, and have possess'd accordingly for many Years.

These Lands have been encroached upon by the English, who have for Miles on end cut much of their good Timber.

They ask that the English would interpose, and prevent such Encroachments for the future; and they will assist us with all their Power in the common defense of our Country; and they hope if the Almighty be on our side the Enemy will not be able to deprive us of our Lands.^{75/}

^{74/} Ibid., 158.

^{75/} L. Kinvin Wroth, *Province in Rebellion: A Documentary History of the Founding of the Commonwealth of Massachusetts 1773-1775* (Harvard Univ. Press, 1975), 2294.

Thus, as of the time of the Revolution, the Penobscots still occupied and claimed their lands. More importantly, the Provincial Congress recognized their claims also. On the same day that the above report was read, the Provincial Congress passed a resolution which:

...strictly forbid any person or persons whatsoever from trespassing or making waste upon any of the lands and territories or possessions beginning at the head of the tide on Penobscot River, extending six miles on each side of said river now claimed by our brethren the Indians of the Penobscot tribe, as they would avoid the highest displeasure of this Congress.^{76/}

The records of the Provincial Congress do not explain why the resolution was limited to the head of the tide. The Indians may have mentioned the tide as their southern boundary, or the wording in the resolution may have simply reflected a silent but mutual understanding of the boundary as of the time of the Revolution. Much the same can be said for the six-mile corridor. The riverine orientation of the Penobscots clearly did not limit them to an arbitrary European measure such as the mile. Their territory was delineated by the heights of land which defined their hunting streams. The Provincial Congress obviously recognized that the Tribe claimed land on both sides of the Penobscot River. Not knowing the precise outer limits of the claim, the Congress may have adopted the twelve-mile wide corridor simply

^{76/}
Kidder, *Military Operations*, 53.

as a matter of convenience. In all events, it is important to note that in adopting its resolution the Provincial Congress did not say that the Penobscots did not own any land outside of the twelve-mile corridor; it only forbade trespass within the corridor.

It was not until after the War^{77/} that Massachusetts again set its sights on Penobscot land. Following the lead of the Provincial Congress, the Massachusetts "Committee on Lands" operated on the assumption that the Penobscots had title to land above, but not below, the head of the tide on the Penobscot River. On July 7, 1784, for example, the committee recommended the establishment of three additional townships "between the lands claimed by the Indians & the uppermost of the twelve townships...."^{78/} To facilitate settlement beyond the three townships, Massachusetts appointed Commissioners to ascertain the limits of the Penobscot territory and investigate the possibility of a cession by the tribe of some of the land which it was found to

^{77/}

The Penobscots aided the Americans in the Revolution, and were under the care of John Allan, the Superintendent of the federal Eastern Indian Department. See Kidder, *Military Operations*, 126.

^{78/}

July 7, 1784, Report of Committee on Lands in the County of Lincoln, Baxter, *Bax. Mss.* XX, 354.

79/
own.

The Commissioners presented their case to the Penobscots on September 4, 1784. They learned, they said, that the Penobscots possessed, "more lands than were necessary for their purpose....," and that they had sold "considerable tracts for trifling considerations." The Commissioners noted that these sales were void without approval from the Commonwealth. The Commissioners then stated, however, that if the tribe "...really possessed more Lands than were necessary or were desirous to change their present bounds for others so that all their land should be on one side of the River or on both Sides higher up, a due consideration should be allowed them therefore."^{80/}

The Penobscots rejected the suggestion that they wanted to sell or trade any part of their territory. They asserted their right of ownership on the basis of immemorial possession and referring to the Watertown Resolve (without mentioning a twelve-mile corridor), maintained that the General Court had fixed their bounds from the head of the "tides up to the head of the River."

79/ This committee was aware of the twelve mile corridor in the Watertown Resolve but apparently took the position that the corridor was not intended to limit the tribe's territory since it recommended appointment of suitable persons to ascertain the boundaries of the lands claimed by the tribe. June 30, 1784 Report of Committee Appointed by Resolve of Oct. 20, 1783, filed with 1784 Res. C. 57, Mass. Arch.

80/ Sept. 4, 1784, The Substance of the Commissioners' speech..., in Papers filed with 1796 Jan. Sess. Res. C. 86, Mass. Arch.

They also denied that they had sold any land.^{81/} On the other hand, the Tribe welcomed the opportunity to establish a mutually recognized boundary. "All that we desire," they declared, "is that you will fix the bounds, that we may know what we possess."^{82/} According to the commissioners, the most that the Tribe would consider was a new boundary four miles above the head of the tide. When the commissioners suggested instead "that the Indians should occupy the Lands on both sides of the River, half the distance from the Canada lines to the head of the Tide," the Penobscots became insulted and "the Principal of them very abruptly left the Conference."^{83/}

The commissioners and the committee appointed to consider the nature of Penobscot claims responded to this diplomatic defeat by divising a theory of Penobscot title which, they hoped, would avoid the necessity of such encounters in the future. After incongruously opening with an admission that they had "satisfactory evidence that the Indians of the Penobscot Tribe have long inhabited Penobscot River and parts thereto adjacent," they asserted that the Penobscots had been "driven from their Settlements" during the Seven Years' War. The committee also maintained that the Penobscots had voluntarily surrendered their lands,

^{81/}

Ibid.

^{82/}

Sept. 4, 1784, The Answer of the Indian Chiefs to the Commissioners...., *ibid.*

^{83/}

Oct. 25, 1784, The Report of the Commissioners appointed to confer with the Indians of the Penobscot Tribe, *ibid.*

apparently on the grounds that the Penobscot individuals who had submitted to Governor Pownall were "probably Chiefs." The committee further quibbled that the Watertown Resolve was not a grant or a recognition of Penobscot title. Rather, the committee claimed, it only confirmed "those Rights formerly granted to them of hunting and fishing on those Lands and in the Rivers & Streams running thro the same." And finally, the committee added that the Penobscots had no "equitable Title" because of their small population and readjusted population estimates accordingly: the committee reduced the number of Penobscot families from the Commissioners' statement of forty to twenty-five. These, they added, "are daily decreasing in their numbers." The committee concluded that the Commonwealth should simply assign the Penobscots a reservation.^{84/}

The committee's review of Penobscot history was patently false. We know, for example, that the individuals who signed Pownall's document were not chiefs of the Tribe, and it is clear that the Penobscots were never driven from their settlements. Furthermore, if the Watertown Resolve had done nothing more than reconfirm the Tribe's exclusive hunting and fishing rights (which it clearly did) it probably would have been sufficient to constitute recognition of the Penobscot's aboriginal

^{84/} March 5, 1785, The Committee appointed to State the Indian Claim to Lands on Penobscot River..., *ibid.*

title. The Commonwealth, however, apparently concluded that it could not successfully maintain such a high handed position. In August, 1786, the State sent new commissioners (Benjamin Lincoln, Thomas Rice and Rufus Putnam) "to treat with the Penobscot Tribe of Indians respecting their claims to Lands on Penobscot River...."^{85/} The Rev. Daniel Little, an observer at the conference, described the Commissioners' purpose as being "to purchase the Indian's Lands on Penobscot River, or settle more certain & advantageous boundaries...."^{86/}

During the conference the Penobscots maintained their claim to the head of the tide. While the Commissioners argued that the Indians had relinquished their "right to this part of the country to Gov. Pownall," in contradiction to the position taken by the 1784 commission, they acknowledged, according to Rev. Little, that the Watertown Resolve confirmed Penobscot title to six miles on each side of the river from the head of the tide.^{87/}

^{85/} A resolve of March 18, 1785 appointed commissioners "to treat with the Penobscot Tribe of Indians, respecting their claims to lands on Penobscot River....," but a meeting never took place. See July 4, 1786 letter, Benjamin Lincoln Papers, Mass. His. Soc., Reel 7, 471-474.

^{86/} Reverend Daniel Little, Journal, 109, Manuscript Copy, Maine Historical Society, Portland, Maine.

^{87/} *Ibid.*

This concession, however, was not enough for the Penobscots. The statement about their lands "much hurt and disappointed" them as "...they supposed before they had the whole width of land as far as the waters of this river extended East and West."^{88/} The Commissioners also added that the Watertown Resolve did not give the Penobscots much advantage, since the Tribe would be prevented from hunting as soon as Massachusetts settled the area beyond the six miles.^{89/} Nevertheless, the Penobscots refused the Commissioners' offer "to give you a larger tract up the river, better for hunting & two islands in the bay."^{90/}

The Commissioners then offered the Penobscots a new set of terms. The Penobscots would cede

...all their claims & Interest to all the lands on the west side of the Penobscot river, from the head of the tide up to the River Pisquataquiss

^{88/}

Aug. 30, 1786, Letter of Committee to Governor in re Indians, *ibid.*, 248. The Commissioners chose to imply from the Indians' silence on the subject that the Penobscots no longer claimed title to their land on the basis of immemorial possession.

^{89/}

Ibid., 240.

^{90/}

Little, *Jornal*, 110. The offer of the islands provides evidence that the Tribe was still using their coastal lands and islands as of 1786.

being about Forty three miles, And all their claims & Interest on the east side of the river from the head of the tide aforesaid up to the river Mantanomkeektook being about 85 Miles....

The Tribe, for its part, would reserve to itself

...the Island on which the Old Town stands, About 10 Miles above the head of the tide, and those Islands on which they now have actual Improvements in the said river, lying from Sunkhaze river, about 3 Miles above the said old town to Passadunkee Island, inclusively, on which Island their new Town so called, now stands, and

fee title to two island in Penobscot Bay, known as Black Island and White Island near Naskeeg point.

Perhaps most significantly of all, the proposed treaty also contained the following pledge:

And we further agreed that the lands on the west side of the river Penobscot, to the head of all the waters thereof, above the said river, Pisquataquiss & the lands on the east side of the river to the head of all the waters thereof, above the said river Montanomkeektook, should ly as hunting ground for the Indians and should not be laid out or settled by the state or engrossed by Individuals thereof....^{91/}

After deliberation, the Penobscots proposed a boundary at Passadumkeag but the Commissioners refused to consider that compromise. The Penobscots responded that the land Massachusetts desired could be theirs but "they expected to be paid for it." A few moments more of negotiations passed and the

^{91/} *Ibid.* The details of the proposed treaty were set forth in a subsequent draft document. See fn. 94, *infra*.

Commissioners promised "350 Blankets, 200 lbs Powder, & Shot & Flints in proportion, at the time when you sign the papers for the ratification of this agreement."^{92/}

The verbal agreement between the Penobscots and the Commissioners rested on shaky ground at best. The Commissioners advised the Governor and Council that they "discovered a total aversion in the Indians to surrender all their claims," as Massachusetts wished. "The Indians were so far from doing this, that when they were urged to relinquish as far North as the west side of the river as on the east side they absolutely refused on any terms whatsoever, to comply with the proposition."^{93/}

Happy with even a partial cession, on October 4, 1786, Governor Hancock recommended that the Commission's promises of goods be granted to the Penobscots in return for "a proper deed of the ceded lands."^{94/} Accordingly, the legislature

^{92/} August 30, 1786, Report of Committee on Penobscot Indians, Baxter, *Bax. Mss.*, XXI, 241.

^{93/} Oct. 4, 1786, Governor's Address in re Indians, *ibid.*, 238.

^{94/} Oct. 11, 1786, Act Confirming Treaty with Penobscot Tribe, *ibid.*, VIII, 80-82.

passed an act confirming the Commissioners' verbal agreement with the Penobscots. The act empowered the Governor to appoint a person "to carry into execution the said agreement" by receiving from the Penobscots "a deed of relinquishment in due form." It further provided that "when the said deed of relinquishment shall be executed as aforesaid, this act shall be considered as a compleat and full confirmation of the agreement before recited...."^{95/} Both the Commissioners and the Legislature understood, then, that the verbal agreement of August, 1786, required the signature of a formal deed and the delivery and acceptance of the goods provided in payment.

Early in November, 1786, Benjamin Lincoln, on behalf of Governor Bowdoin, traveled to the Penobscot to complete the verbal agreement of August. He met Chief Orono who informed him "... the Tribe was in general out on their winters' hunt, & that they would not be collected untill the Spring." On the chance that the Penobscots might return "sooner than was expected," Lincoln placed the treaty goods and the unsigned deed in the care of John Lee of Majorbagaduce [Castine].^{96/} Lee also

^{95/} Nov. 9, 1786, Benjamin Lincoln to Gov. J. Bowdoin, Benjamin Lincoln Papers, Mass. His. Soc. Reel 7, 547-48. *And see also* Nov. 6, 1786, B. Lincoln to John Lee, and Nov. 10, 1786, B. Lincoln to Gov. Bowdoin, both letters filed with 1796 Jan. Sess., Res. C. 86, in Mass. Arch.

^{96/} Dec. 5, 1786, John Lee to Benjamin Lincoln, Benjamin Lincoln Papers, Mass. His. Soc. Reel 7, 564.

soon concluded an agreement would not be reached until spring.^{97/}

A full year passed in futile efforts to induce the Penobscots to accept the goods and to formally cede their lands. John Lee repeatedly conversed with the Penobscot chiefs. He learned "that a Majority of the tribe wish to be off from their engagements." He warned the Penobscots that if they refused to ratify the agreement "that the Governor would chastize them severely." Lee added:

that their refusing to sign the Deed & receive the Blanketts &c would by no means prevent Government from surveying, Disposing of & settling the Lands upon Penobscot River.^{98/}

Governor Hancock, however, favored continued negotiations:

for though perhaps a small force may subdue or extirpate the Tribe of Native if they should commence hostilities, yet the effecting it would be more expensive & troublesome than the compleating a Treaty respecting their Lands can be.^{99/}

On May 29, 1788, Governor Hancock appointed Reverend

^{97/}

Dec. 28, 1787, John Lee to Gov. Hancock, filed with 1796 Jan. Sess., Res., C. 86 in Mass. Arch.

^{98/}

March 17, 1788, Govr. Hancock's Message, *Barter, Bar. Mss.*, XXI, 462-63.

^{99/}

May 29, 1788, Govr's Message Respecting a Conference with the Penobscot Indians, *ibid.*, XXII, 30-31.

Daniel Little to settle the issue.^{100/} Little did not intend to negotiate a new treaty with the Penobscots, but simply "to bring forward & complete the Treaty made at Condukeag by General Lincoln &c, 26 Aug. 1786."^{101/} Despite Little's reiteration of all the arguments of the past few years, the Penobscots refused to sign any document divesting them of their lands. Orsong Neptune argued the Penobscots'

right to the soil from the general peace among French Indians, Americans & King George from the gift of God, who put them here to serve him from the promise of Genl Washington & the Genl Court from the long possession of five hundred years, from their being of the Religion of the King of France & meaning to remain so.^{102/}

Daniel Little responded "...You may expect Govt. will abide by it & expect the same for you."^{103/}

Despite Little's bluff, Massachusetts continued to recognize Penobscot title. In 1791 Henry Jackson, agent for Henry Knox who was seeking to purchase 2,000,000 acres of Maine land, told his principal that the committee charged with the sale of Maine land "...will not permit us to come within six miles of

^{100/} Little, Journal, 126.

^{101/} *Ibid.*

^{102/} *Ibid.*, June 23, 1788, Witnesses Deposition, filed with 1796 Jan. Sess. Res. C. 86 in Mass. Arch.

^{103/} Little, Journal, 128. And see June 25, 1788, Little to Hancock, filed with 1796 Jan. Sess. Res. C. 86 in Mass. Arch.

Penobscot River." Indeed, the land committee informed Jackson that "the six miles on the east side of Penobscot is the property of the Indians."^{104/}

The 1786 treaty was never ratified, and the question of Penobscot lands was not raised again until 1796 when the State again appointed commissioners who this time were successful in obtaining a treaty. The 1796 treaty was similar to the 1786 treaty, except the ceded territory extended only thirty miles up stream from the head of the tide on each side of the river, and the consideration was larger.^{105/} The treaty called for the delivery of "...one hundred and forty nine and a half yards of blue cloth for blankets, four hundred pounds of shot, one hundred pounds of Powder, thirty six hats, thirteen bushels of Salt being one large Hogshead, one barrel of New England Rum, and one hundred bushels of Corn..." upon signing the treaty.

The treaty also called for an "annual annuity consisting of three hundred Bushels of good Indian Corn, fifty pounds of powder, two hundred pounds of shot, and seventy five yards of

^{104/} June 19, 1791, Henry Jackson to Henry Knox, Knox Papers, Mass. His. Soc.

^{105/} The deed which encompasses the terms of the treaty was recorded in the Hancock County Registry of Deeds, Ellsworth, Maine on May 3, 1809 at Book 27, Page 6. See affidavit of Jacob Kuhn, March 8, 1809, and Order of Council dated March 20, 1809 filed with Papers relating to Massachusetts Resolves of 1796, Jan. Sess., C. 86, Massachusetts Archives, Boston, Mass., for explanation of the late registration.

good blue cloth for Blankets...." In return, the Penobscot Tribe was to cede all its "right, Interest and claim to all the lands on both sides of the River Penobscot, beginning near Colonel Jonathan Eddy's dwelling house, at Nichel's rick, so called, and extending up the said River Thirty miles on a direct line, according to the General Course of said River, on each side thereof...." Excepted from the transaction and reserved to the Tribe were "...all the Islands in said River, above old town, including said Old-town Island, within the limits of the said thirty miles." A deed encompassing the terms of the treaty was signed by the Penobscot Nation on August 8, 1796. ^{106/}

Neither the proposed 1786 treaty nor the actual 1796 treaty made mention of a twelve-mile corridor. The proposed 1786 treaty specifically reserved to the Tribe as a hunting ground all of the lands above the ceded area on both sides of the Penobscot River "to the head of all the waters" thereof. ^{107/} While the 1796 treaty did not specifically reserve a hunting territory, it is consistent with the 1786 instrument in that it did not purport to extinguish title to anything other than the thirty-mile tract beginning at the head of the tide. Indeed, at the end of the negotiations in which they indicated their willingness to enter the treaty, the Penobsocts said, "Further-

^{106/}

Ibid.

^{107/}

Little, Journal, 110.

more Brothers - as we have come to a settlement about the Lands, what we now say is exactly Right - Now all the land above thirty miles above Col^o Eddys, we do not sell."^{108/}

In 1818 the Penobscots, who had fallen on hard times, sent word to the State that they wished to sell an additional ten townships.^{109/} The Commonwealth responded by appointing three commissioners to treat with the Tribe for the release of all its remaining lands.^{110/} The result was a treaty in which the Tribe relinquished its claim to "all the lands they claim, occupy and possess by any means whatever on both sides of the Penobscot river, and the branches thereof, above the tract of thirty miles in length on both sides of said river, which said tribe conveyed and released to said commonwealth by their deed of the eighth of August, one thousand seven hundred and ninety six."^{111/} The Tribe reserved from the said conveyance four townships near the point where the east and west branches of the Penobscot River converge. The Tribe also reserved the islands in the river which had previously been reserved. Massachusetts promised to purchase two acres of land in the town of Brewer

^{108/} Answer of Indians, August 6, 1796, filed with Massachusetts Resolves of 1796, Jan. Sess. C. 86, Massachusetts Archives, Boston, Mass.

^{109/} Williamson, *History of the State of Maine*, II, 669.

^{110/} *Ibid.*

^{111/} Mary Frances Farnham, ed., *The Farnham Papers: Documentary History of the State of Maine* (Portland: Lefavor - Tower Company: 1902) vol. VIII, 127-132.

for the use of the Tribe, and to provide them with a man who could instruct them in agriculture. Four hundred dollars and certain specified goods were to be delivered immediately, while other supplies were to be delivered annually thereafter.

The four townships which were reserved by the Penobscots in the 1818 treaty were purchased by the State of Maine in an agreement concluded on June 10, 1833.^{112/} The Indians were to be paid \$50,000, the principal amount of which was to be placed in the state treasury, with the interest paid to them annually if the state thought they needed it. Unappropriated interest was to be added to the principal.

Today the Penobscot Tribe has only the islands in the Penobscot River between Old Town and Mattawamkeag. In fact, the Tribe doesn't even have all of the islands, since the land area of the islands has been reduced by flooding caused by hydro-electric dams.^{113/}

CONCLUSION

On the basis of research conducted both prior to and in the process of preparing this report, the author is prepared to

^{112/} *Ibid.*, 303.

^{113/} See *Taylor v. Bangor Hydro-Electric Company*, Civil No. 1970 (D. Me., Filed July 17, 1972).

testify as an expert witness that the Penobscot Nation constitutes (and has constituted since time immemorial) a tribe of Indians, that the Penobscot Nation used and occupied an aboriginal territory which included the entire Penobscot watershed in the present State of Maine, together with a major portion of the St. John watershed in the present State of Maine, and that the Penobscot Nation did not cede any part of its aboriginal territory above the head of the tide on the Penobscot River prior to its 1796 treaty with the Commonwealth of Massachusetts. With regard to the Penobscot Nation's aboriginal territory below the head of the tide on the Penobscot River, the author is prepared to testify as an expert witness that in 1736 the Penobscot Nation agreed upon a boundary in the vicinity of St. Georges River and ceded the comparatively small territory south of that line. The author is also prepared to testify that by the time of the Watertown Resolution in 1775 the Tribe may have lost the exclusive use of much of the remaining area below the head of the tide even though it had not been formally ceded, and that the Tribe appears to have been forced to acquiesce in the head of the tide as its southern boundary by that time, although there is some indication that the Tribe continued to use and occupy lands and/or islands in that area after that time.